



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance*  
*One Ashburton Place, Room 411*  
*Boston, MA 02108*

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### Advisory Opinion

August 28, 2002  
AO-02-32

Kevin Conroy, Esq.  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210

Re: Activities of non-profit organization relating to statewide ballot question

Dear Mr. Conroy:

This letter is in response to your August 12, 2002 request for guidance regarding the application of the campaign finance law to a national non-profit organization's (the "Organization") donations to a Massachusetts statewide ballot question committee.

The Organization is registered as a 501(c)(4) entity with the Internal Revenue Service and is involved in activities throughout the country. It plans to organize a statewide ballot question committee in Massachusetts. You have requested an opinion to address three scenarios:

1. A second non-profit organization (registered as a 501(c)(3) entity) wants to make a donation to the ballot question committee that is in the process of organizing. The second non-profit organization makes a donation to the Organization, and specifically notes that the funds should be contributed to the committee once it is organized. The Organization then contributes the funds to the committee once it is organized. The committee would report that the 501(c)(3) organization made the donation via the Organization.

2. A corporation gives a large donation to the Organization with specific instructions that the Organization give these funds to state ballot question committees around the country that are supporting Issue X. The Organization identifies ballot questions throughout the country, which are supporting Issue X including the ballot question committee. With the advice and consent of the corporation, the Organization makes a contribution to the committee out of the funds that were donated by the corporation. The committee would report that the corporation made the donation via the Organization.

3. A donor wants to make a donation of stock to the ballot question committee, but the committee does not have a brokerage account that can receive and sell stock. The donor donates the stock to the Organization with the instruction that the stock be cashed and the proceeds be donated to the committee. Following the donor's wishes, the Organization accepts the stock, sells it and donates the proceeds to the committee. The committee would report that the donor made the donation via the Organization.

#### QUESTIONS

For each of the three scenarios, you have asked the following questions:

- (1) Would the transactions violate M.G.L. c. 55?
- (2) Would the Organization be required to register as a political committee in Massachusetts if it participated in any of these transactions?

#### RESPONSE

Your questions relate to the broader issue of the extent to which organizations may raise contributions on behalf of ballot question committees. Because the transactions would involve the Organization's initial receipt and subsequent deposit of funds or other things of value specifically to influence a Massachusetts ballot question, they would not comply with the campaign finance law unless the Organization establishes a separate segregated fund, which is registered as a Massachusetts ballot question committee. The Organization may, however, acting as an agent of the Massachusetts ballot question committee, raise funds made payable to the committee and transfer such funds, in the form received, to the committee.

The campaign finance law defines a "ballot question committee" as any association, organization, or other group of persons, "which receives or expends money or other things of value for the purpose of favoring or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . ." See M.G.L. c. 55, § 1. Such a committee must organize before funds are raised on its behalf, must file campaign finance reports and is subject to certain limitations specified in the campaign finance law. The committee would be duly organized once a Statement of Organization (Form 101BQ) identifying the officers of the committee is filed with OCPF.

If the Organization were to solicit or receive contributions payable to the Organization, specifically for the purpose of supporting a Massachusetts ballot question, it would be operating as a Massachusetts ballot question committee. This would be the case even if the Organization also solicits contributions on behalf of ballot question committees in other states as well as Massachusetts. The Organization could, however, solicit contributions **on behalf of** an existing Massachusetts ballot question committee. In that instance, the contributions **would need to be made payable to the ballot question committee** – not the Organization.<sup>1</sup> See AO-98-21 (stating that the Massachusetts Audubon Society could solicit contributions as an agent of a ballot question committee, but if it solicited contributions made payable to Mass. Audubon and then deposited the checks prior to making expenditures to support a ballot question, the Society would itself be operating as a political committee) and AO-01-06 (advising that the Society must organize a ballot question committee prior

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<sup>1</sup> The Organization would need to promptly forward the checks to the committee and give the treasurer of the committee a detailed account of all funds received within three business days of receipt. See M.G.L. c. 55, § 23.

to raising money for the purpose of influencing a question on a municipal ballot). Consistent with these opinions, the office has stated that “earmarked contributions,” i.e., funds given “with the intent, expectation or condition that it will subsequently be contributed to or used to support a particular candidate or candidate, or a particular committee or committees,” interfere with the requirement that contributions be accurately disclosed. See AO-02-15.

As discussed in OCPF’s interpretive bulletin IB-82-01, a non-Massachusetts political committee may contribute funds to a Massachusetts ballot question committee if it does not initially solicit or receive its funds “specifically to influence the Massachusetts ballot question.” A non-Massachusetts committee, or any entity that intends to solicit or receive funds for the specific purpose of influencing a Massachusetts ballot question, must first organize a separate Massachusetts ballot question committee to receive such funds.<sup>2</sup>

Section 1 of Chapter 55 defines a contribution in part as “a contribution of money or anything of value.” Stock is “something of value” which may be contributed to a ballot question committee. Therefore, when received, it is an “in-kind contribution.” Section 6 specifies that political committees may place funds in savings accounts or money markets, but may not “invest funds or other things of value in any other manner.” Based on this limitation, the office has concluded that political committees may not hold stock and must liquidate any stock received within five business days of such receipt. See AO-83-07. It is my understanding that a committee receiving stock may easily comply with this requirement by either creating a brokerage account, e.g., via the Internet, or by contacting the company that issued the stock to liquidate the stock. The committee receiving the stock should cash in the stock to avoid confusion regarding the nature of the transaction. There may be minimal costs associated with creating a brokerage account. These costs would be the responsibility of the committee and must be reported as expenditures by the committee.

This opinion is issued within the context of the campaign finance law<sup>3</sup> and is provided solely on the basis of the representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

MJS/gb

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<sup>2</sup> Where funds are solicited or received to support the general goals of an organization rather than the specific goal of influencing a Massachusetts ballot question, the organization receiving the funds is not required to organize a ballot question committee. The office “assesses whether an activity is within the scope of the campaign finance law by determining the *primary purpose* of the activity.” See AO-01-06. Where a corporation makes a donation to an organization with instructions that it be used in part to make a contribution to a Massachusetts ballot question committee, the funds to be transferred have been raised primarily to influence the Massachusetts ballot question.

<sup>3</sup> Questions relating to the extent to which organizations organized pursuant to 26 U.S.C. 501(c)(3) or (4) may become involved in political activity are not within the scope of the jurisdiction of this office and should be addressed to the Internal Revenue Service.